# PRIVY COUNCIL REPORTS

## CHIN CHOY & ORS. v. COLLECTOR OF STAMP DUTIES

**[Privy Council (Lord Wilberforce, Lord Fraser of Tulleybelton, Lord Roskill & Sir Ninian Stephen) June 8, 1981]**

**[Privy Council Appeal No. 26 of 1979]**

*Revenue Law — Stamp duty — Market value on date of execution of property — Whether market value to be taken on date of agreement or date of memorandum of transfer — Stamp Ordinance, 1949, s. 12A.*

*Interpretation of Statutes — Explanatory statement — Later remission order — Meaning of "execution" — Stamp Duty (Remission) Order, 1979 — Stamp Ordinance, 1949, s. 12A.*

*Land Law — Sale of property — Ad valorem stamp duty — Whether to be assessed on market value of property at date of execution of agreement of sale or date of memorandum of transfer — Torrens system — Whether once valid contract of sale is concluded the vendor becomes in equity a trustee for the purchaser of the estate sold — Peculiarity of English land law — Whether applicable in Malaysia — Civil Law Act, 1956, s. 6 — Stamp Ordinance, 1949, s. 12A.*

*English Law — Whether principle of English land law applicable in Malaysia — Civil Law Act, 1956, s. 6.*

This was an appeal from the decision of the Federal Court reported at [1979] 1 M.L.J. 69. The question raised was in relation to the *ad valorem* stamp duty on the transfer of property. The property in question was agreed to be sold by a sale and purchase agreement on 30th October 1971 for the purchase price of $49,000. The memorandum of transfer was executed on the 26th June 1973. The Collector of Stamp Duties assessed the market value of the property as at 26th June 1973 at $65,000 and assessed the stamp duty accordingly. The appellant appealed to the High Court and subsequently to the Federal Court against the assessment but the appeals were dismissed. The appellant appealed with leave from the decision of the Federal Court. It was argued that in the context of section 12A of the Stamp Ordinance the words in paragraph (b) "the market value as on the date of execution of the property transferred or settled" must be construed as referring to the execution of the sale and purchase agreement dated 30th October 1971 and not to the memorandum of transfer dated 26th June 1973 by which time the value of the property in question had substantially appreciated. Reference was made to the existence of the Torrens System in Malaysia, to the explanatory statement to the amending Bill which led to the introduction of section 12A and to the Stamp Duty (Remission) Order 1979.

**Held,** dismissing the appeal: there was no ambiguity in the use of the word "execution" and the context in which the language of paragraph (b) of section 12A of the Stamp Ordinance was used was one expressly related to instruments of transfer by means of which the legal title to the property would be transferred to the purchaser.

[**Editorial Note:** The Stamp Duty (Remission) Order, 1979 (P.U.(A) 91 of 1979) provides that "all instruments of transfer on sale of land under item 32(a) of the First Schedule to the Ordinance are remitted from stamp duty to the extent of the difference between the amount of the stamp duty chargeable in accordance with section 12A of the Ordinance and the amount that would be payable if the stamp duty is calculated on the money value mentioned in the instrument of transfer as the consideration for the transfer, or the market value of the land which is the subject of the transfer as on the date of execution of a duly stamped agreement for sale leading to the execution of that transfer, whichever be the greater."]

*Cases referred to:*

(1) *Christopher Brown Limited* v. *Genossenschaft Oesterreichischer* [1954] 1 Q.B. 8.

(2) *Lewisham London Borough Council* v. *Lewisham Juvenile Court Justices* [1980] A.C. 273.

(3) *Fothergill* v. *Monarch Airlines* [1980] 2 All E.R. 696 at p. 711 and 721.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

*Paramjit Singh Gill* for the appellant.

*S.T. Bates Q.C.* (*S.J. Allcock* with him) for the respondent.

*Cur. Adv. Vult.*

**Lord Roskill** (delivering the judgment of the Board): Though these appeals are 23 in number, it is common ground that each raises the same question regarding liability to *ad valorem* stamp duty chargeable in accordance with section 12A of the Stamp Ordinance, 1949 of the Federation of Malaya, as amended by the Stamp (Amendment) Act, 1967, of Malaysia, and that the decision of their Lordships, as of the courts below in a single appeal, will determine all the appeals. Their Lordships are therefore concerned only with the appeal of the fourth appellant ("the appellant") who on October 30, 1971 executed a sale and purchase agreement with a developer to buy certain property in Kuala Lumpur for the purchase price of $49,000. That agreement was properly stamped for $1 in accordance with item 4 of the First Schedule to the Stamp Duty (Special Provisions) (Malaysia) Act, 1967.

On June 26, 1973 the developer executed a memorandum of transfer of the property so previously agreed to be sold to the appellant. That memorandum of transfer was in Form 14A and in all respects complied with the relevant requirements of the National Land Code for the purpose of transferring to the appellant the legal title to the property which he had previously agreed to buy. Indeed that legal title could be obtained only by registration in accordance with the provisions of that Code.

This memorandum of transfer was submitted to the respondent, together with a copy of the stamped agreement, the relevant information required by section 5 of the Stamp Ordinance, 1949 and *ad valorem* stamp duty of $490 being 1 per cent of $49,000, the consideration stated in the memorandum of transfer. The respondent however assessed the market value of the property as at June 26, 1973 at $65,000 and accordingly assessed the stamp duty payable at $650, being 1 per cent of $65,000. The appellant thereupon paid the difference of $160. Notice of appeal was subsequently filed against this assessment and a case was stated for the opinion of the court pursuant to section 39(2) of the Stamp Ordinance, 1949.

On June 3, 1977 Abdul Hamid J. upheld the assessment made by the respondent. An appeal by the appellant and others to the Federal Court was dismissed on March 22, 1978. Leave to appeal was granted by the Federal Court on November 6, 1978.

In their Lordships' opinion the issue raised by this appeal turns upon the true construction of section 12A of the Stamp Ordinance, 1949 as amended by the Stamp (Amendment) Act, 1967. That section which bears the side note "Assessment of the value of property under transfer or settlement" reads thus: —

"12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be —

(a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement; or

(b) the market value, as on the date of execution, of the property transferred or settled, whichever be the greater;

Provided that the officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned therein as being the market value, unless he shall have reason to believe otherwise."

The principal submission for the appellant was that in the context of section 12A the words in paragraph (b) "the market value, as on the date of execution, of the property transferred or settled," must be construed as referring to the execution of the sale and purchase agreement dated October 30, 1971 and not to the memorandum of transfer dated June 26, 1973 by which time the value of the property in question had substantially appreciated. "Execution", it was said, was a word capable of bearing several meanings. In this context there was an ambiguity in its use and that ambiguity should be resolved in favour of the taxpayer and not the respondent. Their Lordships do not doubt that the word "execution" can bear different meanings according to the context in which the word is used. In the context in which the word was used in *Christopher Brown Limited* v. *Genossenschaft Oesterreichischer*[1] Devlin J., as he then was, thought its use ambiguous. But ambiguity in one context does not of necessity involve that its use in another and widely different context is also ambiguous. In their Lordships' view, as already stated, everything turns upon the context.

Much emphasis was laid by learned counsel for the appellant in his argument upon the existence in Malaysia of the Torrens system and upon the differences between that system and conveyancing practice in England. Nonetheless learned counsel also contended that the effect of the agreement of October 30, 1971 was to transfer the equitable title of the property to the appellant notwithstanding that the legal title could only be transferred by registration in accordance with the National Land Code. The respondent was prepared to concede that the equitable title was transferred on that date and in that manner. However, the principle that once a valid contract for sale is concluded the vendor becomes in equity a trustee for the purchaser of the estate sold is a peculiarity of English land law. But section 6 of the Civil Law Ordinance, 1956 of the Federation of Malaya expressly provides that nothing in that part of that Statute should be taken to introduce into the Federation "any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein". It is not, however, necessary for their Lordships further to pronounce upon this question in the present appeal.

Learned counsel for the appellant invited their Lordships' attention to the text of the bill which led to the enactment of the Stamp (Amendment) Act of 1967 and thus to the introduction of section 12A. His purpose in so doing was to draw attention to the relevant part of the explanatory statement dealing with what became section 12A of that Act. That relevant part stated that this provision was designed to prevent evasion by "the common practice of under-valuing the property by showing a false consideration, less than the true consideration, in the instrument of transfer". Learned counsel asserted that this was the mischief at which the new provision was aimed and accordingly the section should not be construed as having a wider effect than was necessary in order to achieve that stated purpose. Their Lordships are quite unable to accept this reasoning. Even if it were permissible to have regard to this part of the explanatory statement for the purpose of construing the section, its existence could not properly be used to give to the words of the statute a more restricted meaning than that which those words naturally bear upon their true construction. It by no means follows that because the relevant provision was aimed at one particular target its effect may not have been more far-reaching.

The submission for the appellant, in their Lordships' view, involves reading into paragraph (b) of section 12A words which are not to be found in that paragraph. For the paragraph to bear the meaning contended for it would have to read

"market value, as on the date of the execution of the agreement of sale, or, if there be no such agreement of sale, of the memorandum of transfer of the property transferred or settled."

Their Lordships can find no justification for so drastically rewriting this paragraph. The language of paragraph (b), it is true, does not include any express reference to a memorandum of transfer. But its provisions cannot be divorced from the opening words of the section which refer expressly to "transfer or settlement" as does paragraph (a) of the section. Accordingly, it seems to their Lordships clear that the context in which the language of paragraph (b) is used is one expressly related to instruments of transfer by means of which legal title to the property will be transferred to the purchaser. It follows that, in complete agreement with the courts below, their Lordships are unable to find any ambiguity in the use of the word "execution".

Learned counsel for the appellant also relied upon the provisions of section 2 of the Stamp Duty (Remission) Order, 1979 made on April 19, 1979. Their Lordships were informed by counsel that the purpose of this provision was to reverse the effect of the decision of the Federal Court in the instant appeal. It was argued that the existence of this Order showed that the intention of the legislature in enacting section 12A must have been to limit the incidence of liability in the manner contended for by the appellant. In their Lordships' view it is quite impermissible to construe section 12A by reference to this later amending Order. See *Lewisham London Borough Council* v. *Lewisham Juvenile Court Justices*,[2] *per* Viscount Dilhorne at page 282:

"The meaning of an unamended section of the earlier Act is not altered by amendments made by the later one."

See also *Fothergill* v. *Monarch Airlines Ltd.*,[3] at pages 711 and 721.

In the result their Lordships find themselves in complete and respectful agreement with the conclusions reached in both courts below and will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Philip Conway Thomas & Co.; Stephenson Harwood.*